



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

May 14, 1996

Ms. Christine T. Rodriguez  
Staff Attorney, Legal and Compliance  
Texas Department of Insurance  
P.O. Box 149104  
Austin, Texas 78714-9104

OR96-0704

Dear Ms. Rodriguez:

You ask whether certain information is subject to required public disclosure under the Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 39717.

The Texas Department of Insurance (the "department") received two requests for information seeking documents "concerning the rounding of insurance premiums on auto policies." You claim that the requested information is excepted from required public disclosure under section 552.103(a) of the Government Code. You have submitted a representative sample of the documents associated with the information request at issue.

To show that section 552.103(a) is applicable, the department must demonstrate that (1) litigation is pending or reasonably anticipated and (2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.-Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4. Contested cases conducted under the Administrative Procedure Act, chapter 2001 of the Government Code, are considered litigation under section 552.103. Open Records Decision No. 588 (1991) at 7. Section 552.103 requires concrete evidence that litigation may ensue. To demonstrate that litigation is reasonably anticipated, the department must furnish evidence that litigation is realistically contemplated and is more than mere conjecture. Open Records Decision No. 518 (1989) at 5. Whether litigation is reasonably anticipated must be determined on a case-by-case basis. Open Records Decision No. 452 (1986) at 4.

In this instance, you state that the department is investigating the procedures used by insurers for rounding of premiums on auto policies of less than one year. You have sent out letters to certain companies and are currently receiving responses. You state, without specificity, that "there is ongoing litigation on this issue where it has been alleged that [the department] is a necessary party." You also explain, however, that at the

conclusion of the investigation, an administrative contested case against some of the insurers involved in the investigation is possible. We conclude that litigation is reasonably anticipated. We additionally find that the documents submitted by the department are related to the reasonably anticipated litigation for the purposes of section 552.103(a). The documents may, therefore, be withheld pursuant to section 552.103.<sup>1</sup>

Among the submitted materials, however, there appear to be documents to which the potential opposing parties have already had access. Generally, once information has been obtained by all parties to the litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). Thus, information that has either been obtained from or provided to the opposing party in the anticipated litigation is not excepted from disclosure under section 552.103(a), and it must be disclosed.

Further, the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

Additionally, you do not claim that any of the requested information is excepted from disclosure by section 552.101 of the Government Code. You do not assert that the requested information is confidential by law; therefore, we are unable to address it here. *But see* Insurance Code arts. 1.24 and 1.24D.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,



Don Ballard  
Assistant Attorney General  
Open Records Division

JDB/ch

Ref.: ID# 39717

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<sup>1</sup> In reaching our conclusion here, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988); 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Ms. Christine T. Rodriguez - 3

Enclosures: Submitted documents

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